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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,426	09/23/2003	Bahar Reghabi	047711-0321	4240

23392 7590 12/06/2006

FOLEY & LARDNER
2029 CENTURY PARK EAST
SUITE 3500
LOS ANGELES, CA 90067

EXAMINER

SMITH, TERRI L

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/669,426

Applicant(s)

REGHABI ET AL.

Examiner

Terri L. Smith

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 03 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

GEORGE R. EVANISKO
PRIMARY EXAMINER

12/3/6

Continuation of 11. does NOT place the application in condition for allowance because: With regard to Applicant's arguments, prosecution on the merits is closed. Applicant's arguments are not persuasive. Examiner respectfully disagrees with Applicant's repeated argument that Schulman et al. (6,164,284) neither discloses nor suggests the claimed feature of ... the implantable sensor having a housing within which are disposed a plurality of implantable sensing elements, each sensing element is operable through electrical communication with an external controller via an individual interconnect. As recited in the Office Action mailed on 03 August 2006, Figs. 1, 2 and 3A disclose a housing (e.g. shown as 100c in Fig. 1 and described in column 4, lines 29-30). It is readily apparent from Schulman et al. that each microstimulator includes 2 sensors, 188 and 186 (e.g. as shown in Fig. 3A). It is noted that the claims did not state that both sensors are for sensing physiological parameters, but only contain the broad limitation of "an implantable sensor." Schulman et al. teaches operable through electrical communication with an external controller via an individual interconnect e.g. as shown in Figs. 2 and 3A where 172, 174 represent external controllers and is operable through electrical communication via an individual interconnect e.g. as shown in Fig. 3A at 106, 374 and the unlabelled line between 188 and 130. Regarding claim 42, Applicant's argument that Schulman et al. ('284) neither discloses nor suggests each of the plurality of implantable sensing elements comprises a power supply, Examiner respectfully disagrees. As recited in column 15 lines 5-7, 104 is the rechargeable battery in each of a plurality of implanted devices 100. Given that 104 is clearly shown e.g. in Fig. 3A as a power supply for the operation of the circuitry shown, of which the sensing elements are a part, Examiner contends that 104 meets the claim limitation as set forth in claim 42. NOTE: Applicant did not claim that each of a plurality of implantable sensing elements each comprise a power supply. In response to Applicant's argument that the Examiner's failure to cite any prior art that shows the specific combination of sensors and the benefits provided by sensing the combination of parameters and that the Examiner has merely provided conclusory statements with no prior art citations and no prima facie case of obviousness, Examiner provides the following prior art that supports Examiner's position that it is well known in the art for a plurality of implantable sensing elements to comprise a lactate sensing element measuring a parameter for blood lactate level and a pH level sensing element measuring a parameter for pH level (Office Action; page 4): Natarajan et al., U.S. Patent 6,501,983 column 17, line 22-23 and column 21, line 28.